

## **DETAILED ACTION**

Applicant's election without traverse of claims 23-42, 44 and 45 in the reply filed on 3/11/08 is acknowledged. Claims 1-22, 43 and 46-56 are withdrawn from further consideration as directed to a non-elected invention.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 23-42, 44 and 45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "low filament number" and "high denier monofilament" are relative terms which renders the claims indefinite. The terms "low" and "high" are not specifically defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Also the recitation "denier size comparable to a high denier monofilament" has no clear and definite meaning as to the metes and bounds of the claim since it is unclear how the elements compare in size. The recitation "would not irritate a wearer's skin" is an indefinite relative recitation based on a future use of the material considering an individual user's opinion making the claim indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23 and 45 insofar as definite are rejected under 35 U.S.C. 102(b) as being anticipated by Norris et al (US 6698252).

Norris et al (US 6698252) teaches the textile product as claimed including a “low” filament number yarn (12, 14, see col. 3, paragraph 2) “comparable to a high denier monofilament yarn” such that the fine denier of each individual filament “would not irritate the wearers skin” to the extent claimed and definite.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris et al (US 6698252) in view of Mitchell et al (6779367)

Norris et al teaches a knit garment which includes the specific yarn as claimed and as definite. However, the Norris et al garment is formed via warp knitting instead of the weft knitting as claimed. Mitchell teaches a weft knit brassiere. It would have been obvious at the time the invention was made to form the knit yarn of Norris et al as a weft knit layered brassiere as shown by Mitchell so that so that the specific yarn characteristics associated with the multifilament yarn of Norris would be present in a weft knit brassiere and formed in an

minimized step circular knitting process. Concerning claim 25, the multifilament yarn “can be” used as a ground yarn.

Claims 27-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris et al in view of Rock et al (6116059).

Norris et al teaches a knit garment which includes the specific yarn as claimed and as definite. However, the Norris et al garment is not set forth as a multilayer knit spacer fabric. Rock et al. teaches a multilayer knit spacer fabric. It would have been obvious at the time the invention was made to form the knit yarn of Norris et al as a multilayer spacer fabric as shown by Rock et al so that the specific yarn characteristics associated with the multifilament yarn of Norris such as a matte finish would be present in a spacer fabric. Note the specific yarn sizes and yarn types are met by the combined disclosures of Norris et al and Rock et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is 571/272-4997. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GARY WELCH can be reached on 571/272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Danny Worrell/  
Primary Examiner, Art Unit 3765